

ORDINANCE AMENDING AND RE-ENACTING SECTIONS 4-2-88 – COLLECTION OF TAX BY SELLER, SECTION 4-2-89 – EXEMPTIONS; LIMITS ON APPLICATION, SECTION 4-2-92. PENALTY FOR VIOLATION OF ARTICLE, SECTION 4-2-106 - INTEREST AND PENALTIES, AND SECTION 4-2-127 - NOTICE OF LOCAL TANGIBLE PERSONAL PROPERTY TAX RELIEF OF THE CODE OF ORDINANCES CITY OF HARRISONBURG, VIRGINIA

Be it ordained by the Council of the City of Harrisonburg, Virginia:

Sections 4-2-88, 4-2-89, 4-2-92, 4-2-106 and 4-2-127 be amended as shown:

Sec. 4-2-88. Collection of tax by seller.

Every person receiving any payment for food with respect to which a tax is levied hereunder shall collect and remit the amount of the tax imposed by this article from the person on whom the same is levied or from the person paying for such food at the time payment for such food is made; provided, however, no blind person operating a vending stand or other business enterprise under the jurisdiction of the ~~department of visually handicapped~~ [Department for the Blind and Vision Impaired](#) and located on property acquired and used by the United States for any military or naval purpose shall be required to collect or remit such taxes.

All tax collections shall be deemed to be held in trust for the city.

Sec. 4-2-89. Exemptions; limits on application.

- (a) The tax imposed under this article shall not be levied on the following items when served exclusively for off-premises consumption:
- (1) Factory-prepackaged candy, gum, nuts and other items of essentially the same nature.
 - (2) Factory-prepackaged donuts, ice cream, crackers, nabs, chips, cookies and items of essentially the same nature.
 - (3) Food sold in bulk. For the purposes of this provision, a bulk sale shall mean the sale of any item that would exceed the normal, customary and usual portion sold for on premises consumption (e.g. a whole cake, a gallon of ice cream); a bulk sale shall not include any food or beverage that is catered or delivered by a food establishment for off-premises consumption.
 - (4) Alcoholic and nonalcoholic beverages sold in factory sealed containers.
 - (5) Any food or food product purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children.
 - (6) Any food or food product purchased for home consumption as defined in the Federal Food Stamp Act of 1977, 7 U.S.C. section 2012, as amended except hot food or hot food products ready for immediate consumption. For the purposes of administering the tax levied hereunder, the following items whether or not purchased for immediate

consumption are excluded from the said definition of food in the Federal Food Stamp Act: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages. This subsection shall not affect provisions set forth in subparagraphs (c)(3), (4) and (5) hereinbelow.

- (b) A grocery store, supermarket or convenience store shall not be subject to the tax except for any portion or section therein designated as a delicatessen or designated for the sale of prepared food and beverages.
- (c) The tax imposed hereunder shall not be levied on the following purchases of food and beverages:
 - (1) Food and beverages furnished by restaurants, as defined in Virginia Code § 35.1-1, to employees as part of their compensation when no charge is made to the employee.
 - (2) Food and beverages sold by day care centers, public or private elementary or secondary schools or food sold by any college or university to its students or employees.
 - (3) Food and beverages for use or consumption and which are paid for directly by the Commonwealth of Virginia, any political subdivision of the Commonwealth of Virginia or the United States.
 - (4) Food and beverages furnished by a hospital, medical clinic, convalescent home, nursing home, home for ~~the aged, or~~ infirm individuals, handicapped individuals with disabilities, battered women, narcotic addicts or alcoholics, or other extended care facility to patients or residents thereof.
 - (5) Food and beverages furnished by a public or private non-profit charitable organization or establishment or a private establishment that contracts with the appropriate agency of the Commonwealth of Virginia to offer meals at concession prices to elderly, infirm, ~~blind, handicapped~~ or needy persons-individuals or individuals with blindness or other disabilities in their homes or at central locations.
 - (6) Food and beverages sold on an occasional basis by volunteer fire departments and rescue squads; nonprofit churches or other religious bodies; or educational, charitable, fraternal, or benevolent organizations, not exceeding the first three (3) times per calendar year, and beginning with the fourth time, on the first one hundred thousand dollars (\$100,000.00) of gross receipts per calendar year from sales of meals (excluding gross receipts from the first three (3) times) as a fundraising activity, the gross proceeds of which are to be used by such church, religious body or organization exclusively for nonprofit educational, charitable, benevolent or religious purposes.
 - (7) Food and beverages sold through vending machines.
 - (8) Food and beverage furnished by churches that serve meals to their members as a regular part of their religious observances or age-restricted apartment complexes or residences with restaurants, not open to the public, where meals are served and fees are charged for such food and beverages and are included in rental fees.

(9) Age-restricted apartment complexes or residences with restaurants, not open to the public, where meals are served and fees are charged for such food and beverages and are included in rental fees.

(10) Sellers at local farmers markets and roadside stands, when such sellers' annual income from such sales does not exceed \$2500. The seller's annual income for this exemption shall include income from sales at all local farmers markets and roadside stands, not just those sales occurring in the City of Harrisonburg.

Sec. 4-2-92. Penalty for violation of article.

- (a) Any person willfully failing or refusing to file a return as required by this article shall, upon conviction thereof, be guilty of a class 1 misdemeanor except that any person failing to file such a return shall be guilty of a class 3 misdemeanor if the amount of tax lawfully assessed in connection with the return is one thousand dollars (\$1,000.00) or less. Any person violating or failing to comply with any other provision of this article shall be guilty of a class 1 misdemeanor.
- (b) Except as provided in subsection (a) above, any corporate, limited liability company, or partnership officer, as defined in Virginia Code, section 58.1-3906, or any other person required to collect, account for, or pay over the meals tax imposed under this article, who willfully fails to collect or truthfully account for or pay over such tax, or who willfully evades or attempts to evade such tax or payment thereof, shall, in addition to any other penalties imposed by law, be guilty of a class 1 misdemeanor. In addition, any corporate or partnership officer, as defined in § 58.1-3906 of the Code of Virginia, as amended from time to time, or any other person, who wrongfully and fraudulently uses money collected as required by this article, shall be punishable as set forth in § 58.1-3833C of the Code of Virginia, as amended from time to time.
- (c) Any person who willfully utilizes a device or software to falsify the electronic records of cash registers or other point-of-sale systems or otherwise manipulates transaction records that affect any local tax liability shall, in addition to any other penalties provided by law, be guilty of a Class 1 misdemeanor. In addition to the criminal penalty provided for herein and any other civil or criminal penalty provided in this title, any person violating this subsection shall pay a civil penalty of twenty thousand dollars (\$20,000.00), to be assessed by the commissioner of the revenue and collected by the treasurer as other local taxes are collected and deposited into the treasury of the political subdivision of the commonwealth served by the treasurer.
- (d) Each violation of or failure to comply with this article shall constitute a separate offense. Conviction of any such violation shall not relieve any person from the payment, collection or remittance of the tax as provided in this article.
- (e) If any person shall fail or refuse to remit to the city treasurer the tax required to be collected and paid under this article within the time and in the amount specified in this article, there shall be added to such tax by the commissioner of the revenue a penalty of ten (10) percent or ten dollars (\$10.00) whichever is greater, provided, however, that the penalty shall in no case exceed the amount of the tax assessable; and interest at the rate of ten (10) percent per year on the amount of the tax and penalty from the date upon which the tax is due, as provided in this article, until paid.

Sec. 4-2-106. Interest and penalties.

If any person shall fail or refuse to remit to the treasurer the tax required to be collected and paid under this article within the time and in the amount specified in this article, there shall be added to such tax by the commissioner of the revenue a penalty of ten (10) percent, or ten dollars (\$10.00), whichever is greater, provided, however, that the penalty shall in no case exceed the amount of the tax assessable; and interest at the rate of ten (10) percent per year on the amount of the tax and penalty from the date upon which the tax is due, as provided in this article, until paid.

Sec. 4-2-127. Notice of local tangible personal property tax relief.

The city treasurer shall furnish written notice, in each tangible personal property tax bill, of the terms and conditions of the local tangible personal property tax relief program established by this article. The treasurer and commissioner of the revenue shall also employ any other reasonable means necessary to notify residents of the city about the terms and conditions of the tangible personal property tax relief program for elderly and handicapped residents of the city individuals and individuals with disabilities.

This ordinance shall be effective from the _____ day of _____, 2023. Adopted and approved this _____ day of _____, 2023.

MAYOR

ATTESTE:

CITY CLERK